

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARK F. GUTIERREZ,)
vs.) Plaintiff,) Case No. 2:17-cv-02365-MMD-GWF
NANCY A. BERRYHILL, Acting))
Commissioner of Social Security,))
Defendant.) **ORDER**)
Plaintiff's Application to Proceed *In Forma Pauperis* (#1)

This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1), filed on September 8, 2017.

BACKGROUND

Plaintiff alleges a claim against the Social Security Administration (SSA), challenging its denial of social security disability benefits. Plaintiff alleges that at all times relevant to this action, he was disabled as defined by the Social Security Act. Plaintiff claims that the Social Security Commissioner, initially and upon reconsideration, denied his requests for disability insurance benefits and supplemental security income. Plaintiff states that he timely requested review of the ALJ's decision with the Appeals Council, which was denied on July 5, 2017. Plaintiff now seeks judicial review of that final agency decision.

DISCUSSION

I. Application to Proceed *In Forma Pauperis*

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

1 **II. Complaint**

2 Plaintiff brings suit against the SSA alleging he was wrongfully denied social security
3 disability benefits. Federal courts only have jurisdiction to conduct judicial review of the SSA's
4 final decisions. *See* 42 U.S.C. § 405(g); *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008); *see also*
5 *Cilifano v. Sanders*, 430 U.S. 99, 107–09 (1977). Plaintiff appears to have fully exhausted his
6 administrative remedies with the SSA. The Court will therefore allow Plaintiff's complaint to
7 proceed as a petition for judicial review of a final agency decision. Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*
9 (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred
10 dollars (\$400.00).

11 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint (ECF No.
12 1-2).

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall serve the Commissioner of
14 the Social Security Administration by sending a copy of summons and Complaint by certified mail
15 to: (1) Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear
16 Street, Suite 899, San Francisco, California 94105, and (2) the Attorney General of the United
17 States, Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall issue summons to the
19 United States Attorney for the District of Nevada, and deliver the summons and Complaint to the
20 U.S. Marshal for service.

21 **IT IS FURTHER ORDERED** that Defendant shall have **sixty (60) days** from the date of
22 service to file her answer or responsive pleading to Plaintiff's Complaint in this case.

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IT IS FURTHER ORDERED that henceforth, Plaintiff shall serve upon Defendant, or their attorney if they have retained one, a copy of every pleading, motion, or other document submitted for consideration by the court. Plaintiff shall include with the original paper submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to Defendant or their counsel. The court may disregard any paper received by a district judge, magistrate judge, or the Clerk which fails to include a certificate of service.

DATED this 15th day of September, 2017.

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge